



# REAL ESTATE NETWORK NEWSLETTER



## Message from the Chair

College sports – particularly ever-visible football and basketball programs – deal with an interesting challenge: How do you build and sustain a winning program amidst a system of constant turnover and change?

The most successful programs like the University of Michigan University of Alabama, Ohio State University, and Duke University have had the benefit of deep donor and booster money for world-class facilities and pedigree to lure top talent on a consistent basis (sprinkle in a little NCAA violations connected to boosters and there you go). Some of these traditional methods have changed in the wake of NIL and the transfer portal, however, the challenge to remain consistently great and relevant remains.

I joined the ACC (and specifically the ACC Real Estate Network) in 2019 and joined the leadership team in 2020. As a young general counsel, this network served as a valuable sounding board and resource center to help me grow in my field. I was particularly struck by how warm, welcoming, and helpful everyone was as it related not only to professional matter, but also checking in on everyone's own personal well-being. This was a direct reflection of the leadership team as a whole, including past chairs Dawn Haghghi, Elena Antonetti, Erik Valderhaug, Bill Cotter, and, most recently, Jonathan Newberg. They helped foster an open, communicative, and valuable network that I hope I can mirror.

But much like college sports, we consistently must fill our ranks with new (and sometimes old) members to continue the cycle of providing a network with top-notch programming, resources, and networking opportunities – and dare I say, most importantly, a network that fosters community, helping support and navigate our professional and personal lives.

I am encouraged already by this current leadership team's willingness to step up and take on roles that were previously unfamiliar to them. This year we have rolled out a "committee" format related to programming and communications, creating almost "sub-networks" within the network to help collectively tackle certain responsibilities. I am grateful for the voices on the team, who come replete with innovative ideas and differing experiences. I am lucky to have Erik, Dawn and Bill to maintain stability and historical knowledge to help propel the Real Estate Network through 2025.

This year, the Real Estate Network is looking to offer not only incredible programming through Legal Updates and the Annual Meeting, but also to provide opportunities to connect in person throughout the year. We also aim to push out valuable materials – be it through our newsletters or adding thought pieces and contract templates to the ACC resources library.

Finally, I strongly encourage any and all members to join our leadership call and get familiar with your fellow members and the Leadership Team. You are ultimately what enables the Real Estate Network to continue to excel. Please reach out if you have any interest.

**Mitchel Kay – ACC Real Estate Network Chair  
General Counsel & Corporate Secretary, PTS Corp.**



**John Ungar**  
**Corporate Counsel and Director of**  
**Planning for NewCourtland**

**Could you tell us a little bit about your professional history?**

I began my legal career at a boutique complex commercial litigation firm in Philadelphia and practiced there for 5 years. While I was at the firm, I found that I had a greater interest in the various economic development and neighborhood improvement initiatives that were happening in Philadelphia rather than litigation. I decided to change my career path and went to work for a non-profit community development corporation that focused on housing and commercial development projects to revitalize the community. I spent several years there and ultimately became the Chief Operating Officer. During that time, I oversaw the rehabilitation of several commercial, mixed-use and residential real estate projects, and supervised all leasing and property management activities. Although I was not hired primarily as an attorney, because of my background I inevitably became involved in drafting and negotiating commercial contracts, real estate documents, board governance documents and serving as the liaison to outside litigation counsel.

I am currently Corporate Counsel and Director of Planning for NewCourtland. I spearhead all our real estate development projects and serve as a one-person legal team for the corporation, providing support to the rest of the operations and leadership team. My legal duties encompass a wide range of activities, including working on real estate finance closings, zoning and entitlement issues, drafting and negotiating commercial contracts, leases and managing outside counsel.

**Could you tell us about your current employer?**

NewCourtland's mission is to provide access to coordinated health, housing and social services for underserved populations. We pursue this mission primarily by

developing and managing affordable rental housing for low-income senior citizens. Since I joined NewCourtland over 7 years ago, we have added almost 350 new units of affordable senior housing. We are currently nearing completion of our first inclusive housing project, which will combine affordable senior units with market rate, and units with smart home technology for individuals with disabilities.

**What career would you have pursued if you were not a lawyer?**

If I was not a lawyer, I would probably pursue a career where I could develop environmentally sustainable buildings and more green spaces and biking/hiking trails.

**What is the best advice you have received?**

Never stop learning. One of the things I like about being in-house is that I handle a variety of issues and I have the privilege of working with very talented outside counsel. I also enjoy the opportunity to learn from my fellow ACC members. As a one-person legal team, I enjoy the camaraderie of socializing and learning with other in-house counsel.

**What are your favorite places?**

Acadia National Park in Maine and Banff, Canada are two of my favorite places. Both of them are stunningly beautiful and provide the chance to recharge and connect with nature. My wife and I have returned to Acadia numerous times and we call it our "happy place." We took our dog there on one of our trips and as soon as we arrived he was also incredibly happy and energetic. We joked that he was definitely part of our family since he shared our love of the park. We visited Banff for the first time this fall but we are sure to return with family and friends.

**How do you think your job, or the job of lawyers generally, will change by 2030?**

I was at a CLE recently where the presenter said that he was asked whether he thought lawyers would be replaced by AI. He said that lawyers would not be replaced by AI, but that lawyers who did not know how to use AI would be replaced by lawyers that did know how to use AI. Figuring out how we can safely use AI to be more efficient is going to be critical over the next few years.



**Gregg D. Bernhard**  
Shareholder  
VedderPrice

### Could you tell us a little bit about your professional history?

I began my legal career during one of the worst legal markets in California history (though arguably, there have been worse since). Flexibility was essential, so while awaiting my bar results, I took a one-day temp job at a premier real estate boutique firm in Los Angeles. After impressing a partner, I was invited back the next day—and stayed for seven years. Eventually, recognizing the need to be at a full-service law firm (and following a mentor's blunt advice that passing up my next opportunity would be "too stupid"), I moved on as one of the firm's most senior associates.

From there, I joined two of the largest law firms in the country—both excellent, but ultimately not the right fit for my clients' needs. Now, I'm at a 340-attorney international business-focused firm, significantly smaller than my previous firms but well-suited to my practice in real estate, middle-market M&A, global transportation finance, corporate finance, intellectual property, and labor and employment law.

### What do you particularly enjoy about practicing law?

Understanding my clients' businesses allows me to serve as both a legal protector and a trusted advisor. Real estate attorneys must strike a delicate balance—providing sufficient guidance without becoming obstructionist. As one client once put it: "I understand the issues you have raised. I understand them, agree with them, and understand the risk. However, if I don't do the deal, I can't make any money, so I am willing to take the risk."

### What are the current real estate issues that you are most concerned about?

It's not just a single issue but a broader market concern. I worry that interest rates and pricing will remain misaligned, creating a disconnect, while lenders continue to delay action on existing debt. For the real estate market to gain momentum, at least one of these factors needs to shift.

### What is the one piece of advice you would give in-house attorneys dabbling in real estate?

Take the time to negotiate your letters of intent (LOIs) in detail, rather than leaving key terms to be negotiated later as part of the agreement. This approach will save you time and money, result in initial drafts that are much closer to final, and help you avoid comments like, "It's not addressed in the LOI" or "That should have been raised previously."

### What is the best career advice that you have received?

Be born into money, but if that doesn't work out, be great at what you do.

### What career would you have pursued if you had not become a lawyer?

Either becoming an architect or managing a professional sports team. I loved my architecture classes in college, and I'm especially drawn to the design of cities when I travel. As for sports, I grew up playing almost everything—except ice hockey, though I did occasionally go ice skating. I'll watch just about any sport on TV, including whatever new "sport" happens to be airing on ESPN8 (the Ocho).

### Do you have any favorite books or podcasts that you would recommend to others?

Since I spend my days reading for a living, I haven't been reading much for pleasure over the past six months—though I recently finished *North Woods* by Daniel Mason and keep revisiting the first 80 pages of *Slaughterhouse-Five* by Kurt Vonnegut. If I had to pick a favorite book—albeit a somewhat controversial choice—it would be *The Fountainhead* by Ayn Rand. I admire Howard Roark's unwavering commitment to individual creativity and his defiance against conformist mediocrity.

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Gregg D. Bernhard is a Shareholder in Vedder Price's Los Angeles office. As a member of the firm's Real Estate practice group, and with nearly three decades of experience, he regularly represents owners, sellers,

buyers, borrowers, tenants and landlords in various aspects of commercial real estate.

Mr. Bernhard's practice primarily focuses on U.S. real estate transactions, with an emphasis on acquisition, leasing, financing and development. Mr. Bernhard has also worked on various international projects including acquisitions and development projects in Mexico, the Caribbean and Northern Africa. He has extensive experience in the acquisition, disposition, leasing, structuring and financing of various asset classes including office, retail, industrial, medical office, research and development, film and soundstages, cannabis, restaurants, condominiums, multifamily and hospitality.

Notable transactions include representing the buyer on the acquisition of one of the premier hotels in Laguna Beach, California; representing the buyer on the acquisition of a trophy retail site on Rodeo Drive in Beverly Hills, California; representing the buyer on the acquisition of various office, retail, mixed-use and multifamily assets in California and Washington, which acquisitions total more than \$2 billion; representing a national restaurant company on various leases throughout California, and the negotiation of a several hundred thousand square foot build-to-suit lease. Mr. Bernhard received his law degree from the University of California, Davis School of Law, and his undergraduate degree from the University of California, Los Angeles, *cum laude*. Mr. Bernhard has been selected for inclusion in *Best Lawyers in America*® for Real Estate Law since 2021.



**Lauren May**  
Redwood Living, Inc.

### Introduction

If you have been watching the news (or living/working in any number of coastal states) the past few years, you are likely aware that climate change – and, most importantly, the resulting drastic weather events – are taking a toll on real estate. Whether that be residential real estate or

commercial real estate, the multifaceted impact of climate change and its resulting drastic weather events on real estate is undeniable. This article will focus the effects of climate change on commercial real estate deals, but is certainly applicable to residential real estate as well.

### Property Values

The idea of owning real estate in areas subject to the negative effects of climate change is slowly becoming less desirable, both as a result of direct, tangible concerns (i.e., evacuation risks, property damage, etc.), as well as indirect, intangible concerns (i.e., increased costs, insurance rate hikes, etc.). As overall interest in owning real estate in these areas decreases, so will property values.

This volatility in property values will upheave the traditional process of negotiating price in commercial real estate deals. Current property owners, though they may be motivated to sell, will have to come to terms with the possibility of selling the property at a loss compared to the price at which they may have purchased it years ago, or even selling the property for less than is currently owed on any outstanding financing. While sellers weigh the long-term risks of continued property ownership with the short-term risks of selling at a loss, buyers will be able to use this as leverage in negotiating deals.

### Regulatory Issues

In the immediate aftermath of a dramatic weather event, such as a hurricane or wildfire, local efforts will most likely be focused on immediate and short-term needs - disposal of debris, stabilization of remaining structures, and repair/rebuilding. However, over time, communities in these frequently-hit areas will need to adapt if they want to continue to exist and function, and a major component of that adaptation will be upgrading building and zoning codes to help buffer against possible damages associated with dramatic weather events in the future.

These regulatory changes will, of course, apply to new construction, but may also be applicable to structures that are being fully or partially renovated, whether as a result of damage or otherwise. It will be important for buyers to fully understand how modern building codes and other regulatory changes will affect their intended use of property, and this should be thoroughly investigated before purchasing.

### Insurance

The elephant in the room, as it relates to the continuing effects of climate change on real estate, is property insurance. There are two main components of insurance to

## Floods and Hurricanes and Wildfires, Oh My!

## Climate Change and Its Effect on Commercial Real Estate Deals

consider as it relates to commercial real estate dealmaking: availability and pricing.

As insurance companies are forced to pay out more and more claims as a result of property damage resulting from climate change and associated weather events, policies will, of course, increase in cost. The cost of property insurance should be taken carefully into consideration by any potential purchaser of real estate, to ensure that they can afford and justify the higher insurance costs associated with buying real estate in the particular geographical market.

Aside from cost itself, another insurance issue to consider is availability. Some areas may simply be deemed uninsurable as a result of recent damaging weather events. Other areas, though they may have remained safe from major destruction to date, may nonetheless be deemed uninsurable because of changing risk standards – for example with rising sea levels, inland areas that were once insulated from the coastal dangers and costs may now be located in a flood plain or other similar high-risk classification that certain underwriters simply will not insure.

#### **Loan Considerations**

Each lender is different, and, accordingly, has a different appetite for risk. The financeability of a property or project is an important investigation that should be undertaken by a potential purchaser in advance of purchasing commercial real estate, and this is especially pertinent in areas subject to drastic weather events. This due diligence won't be satisfied with a simple phone call, but will likely require multiple conversations with multiple lenders to get a sense of whether or not it will be possible to get financing with respect to certain real property, and what the costs, restrictions and requirements will be associated with such financing. One hot button issue in particular for buyers to consider is what happens if/when a financed property is damaged in a hurricane, wildfire, or similar weather disaster - will the bank require that insurance proceeds to be used to pay down the principal loan amount (leaving the property owner on its own to finance necessary repairs), or will proceeds be disbursed to pay for repair/reconstruction of the project? This is just one of many issues for a buyer/borrower to take into consideration when negotiating financing in areas that are at high risk for climate change-induced weather events.

#### **Conclusion**

Due diligence has always been a critical component of negotiating and closing any commercial real estate deal. The increasing occurrence of drastic weather events as a result of climate change make this due diligence even more important, particularly with respect property values, building codes, insurance and loan requirements.

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## ACC REAL ESTATE NETWORK

### **Current Leadership Officers:**

Chair: **Mitchel Kay**

Vice-Chair / Annual Meeting Chair: **Lisa Morgan**

Programs Committee: **Gisela Munoz (Legal Updates), John Ungar (Annual Meeting), Dawn Haghghi**

Communications Committee: **Erik Valderhaug, Lauren May, Lila Swenson, Deidre Dunn**

Sponsor Liaisons: **Bill Cotter, Carol Steifel**

Immediate Past Chair: **Jonathan Newberg**

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### **Template submission:**

We are asking all members to contribute at least one or two useful templates, guides or other written materials to the Real Estate Network resource library for everyone's benefit. You can review the current documents in the library at [Resource Listings | Association of Corporate Counsel \(ACC\)](#). Please contribute any items that you think would be useful by sending them to [valderhaug@everestproperties.com](mailto:valderhaug@everestproperties.com). Let's make our online library a helpful resource for all members!

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### **Join the leadership team:**

We have an incredible group of in-house attorneys involved with the Real Estate Network Leadership team. There are opportunities for you to get involved at any level. Please reach out to Lila Swenson at [lswenson@travelers.com](mailto:lswenson@travelers.com) if interested – we promise to find an exciting right-fit role for you. We have a 30–45-minute call each month to plan activities for the Network and everyone is welcome to join. It's a fun and satisfying way to grow your professional network.

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